Berrien County Indigent Defense Office
100 Church Street,
St. Joseph, MI 49085
(269) 983-7111 ext. 8550

Berrien County Indigent Defense
Implementation Proposal
Introduction

- **Purpose**
  - Request formal Board approval of the IDIP
  - Provide high quality indigent defense for our community
  - Consider state and national ethics, standards, and systems
  - Conclusion: a Public Defender Office

- **Background/Timeline**
  - This process began in March of 2016
  - Part-time employee
  - Holistic view of the system
  - 90-120 days to survey (ongoing)
  - 60 days to review state and national ethics, standards, and systems
Data and Methods

- Criminal Justice System
  - Reviewed contracts
  - Met with individuals
    - Lawyers
    - Judges
    - Prosecutor
    - Court Staff
    - Sheriff
  - Court observation
  - Supervision
  - State and National research

- The Community
  - Clients
  - Family of clients
  - Community members
  - Surveys

  State and National ID Delivery Systems representatives

44th out of 50 States

Roughly half of counties use contract systems

A Race to the Bottom: Speed & Savings Over Due Process: A Constitutional Crisis, National Legal Aid & Defender Association (2008)
Indigent Defense in Michigan (2016)

Per capita expenditures declined since 2008

Use of Contract Delivery Systems similar to 2008

MIDC, Snapshot of Indigent Defense Representation in Michigan’s Adult Criminal Courts: The MIDC’s First Survey of Local Court Systems (February 2016)
Current Status of Berrien ID

- 3 adult contracts: FDC (St. Joseph); Niles; Drug Court
- 15 attorneys
- Some have indicated they will likely not return after December 31, 2016
- High caseloads on par with much larger counties
- 77% of felonies are indigent clients
- Average number of total cases from 2013-15: 5,238
  - 349 per attorney on the contracts
- In 2015, 5,536 total cases:
  - 2,573 felonies (171.5 per attorney)
  - 2,963 misdemeanors (197.5 per attorney)
Main Considerations for IDIP

- Ethical Standards
- State and National Standards
- The various types of delivery systems
- Advantages and disadvantages of each model
- Economic and human cost of the criminal justice system
- Providing high quality legal representation to some of the most vulnerable members of our community
Professional Ethics

- Michigan Rules of Professional Conduct (MRPC)
- 1973 ABA caseload limits: 150 fel. OR 400 misd.
- ABA “Ten Principles of a Public Defense Delivery System”
- ABA Formal Opinion 06-441 (2006)
- ABA “Eight Guidelines of Public Defense Related to Excessive Workloads”
Main Aspects of Ethical Considerations

- Competence: knowledge of criminal defense; qualified
- Diligence: working for the client; preparation; timely
- Communication: promptly notify and explain
- Manageable caseloads
- Appropriate response if caseloads are excessive
- ID independence
- Parity in resources between ID and Prosecutor
- Supervision
- Properly addressing conflicts of interest
State Standards: MIDC

MIDC Act and proposed standards:

1. Education and Training: knowledge of law, science, technology, and 12 CLE’s per year
2. Initial Interview: purpose, location, timing
3. Investigation and Experts: “counsel shall conduct an independent investigation”
4. Counsel at First Appearance and Critical Stages
Status of the MIDC

- June 1, 2016, MI Sup Ct *conditionally* approve the four proposed standards
- A legislative fix is required before Dec. 31, 2016 or the approval is withdrawn
- The County should not rely on the possibility of future state financial support at this time
- Future proposed standards will very likely include:
  - 1. Reasonable attorney fees
  - 2. Caseload guidelines
Types of ID Delivery Systems

**States**
- Contract attorneys
  - Individual or group
- Assigned counsel
  - List of eligible attorneys
- Public Defender offices
  - 7 in Michigan: Bay, Chippewa, Kent, Lenawee, Muskegon, Washtenaw, Wayne

**Federal**
- Public Defender offices
- Community Defender organizations
- Panel Attorneys
  - Similar to assigned counsel for States
Public Defender v.s. Contracts

<table>
<thead>
<tr>
<th>Public Defender Office</th>
<th>Contracts</th>
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<tbody>
<tr>
<td>• Accountability, oversight, and supervision</td>
<td>• Lower “up front” costs, but higher back end costs</td>
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<tr>
<td>• Full-time, criminal defense specialists</td>
<td>• Encourages spending least amount of time possible on cases; part-time work</td>
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<td>• Representatives for the defense in the CJS</td>
<td>• Financial disincentive to investigate, file motions, try cases</td>
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<tr>
<td>• Community outreach</td>
<td>• Lack of oversight, supervision</td>
</tr>
<tr>
<td>• Reduction in incarceration</td>
<td>• Low bid, flat fee contracts are strongly disfavored</td>
</tr>
<tr>
<td>• Higher “up front” costs, but overall cost savings</td>
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</table>
Overburdened, underfunded, inefficient and inadequate public defense systems lead to more incarceration, in the form of unnecessary pretrial detention, excessive sentences and wrongful convictions.

4. The criminal justice system is overwhelmed by mass incarceration and over-criminalization coupled with inadequate resources.

The U.S. Criminal Justice System

- 5%
- 25%

The U.S. has 5% of the world’s population and 25% of the world’s jail and prison population.
As of 9/7/16:

1,879 exonerations
in the United States,

In Michigan:

66 exonerations
511 years lost
7.74 average years lost

National Registry of Exonerations,
A Project of the University of Michigan Law School,

https://www.law.umich.edu/special/exoneration/Pages/Exonervations-in-the-United-States-Map.aspx
More Sources Showing that Quality Indigent Defense Reduces Costs

- Beyond incarceration costs, “there are additional costs to former inmates, their families and their communities. Those who have been incarcerated emerge from prisons and jails and work for fewer weeks per year, receive lower wages and take home smaller earnings.”

- Represented defendants more than 2.5 times as likely to be released at arraignment and 2.5 times as likely to have bail reduced to amount they can post; delaying representation was the key factor in lengthy pre-trial incarceration for people charged with non-violent crimes

- Pre-trial detention leads to an increase in likelihood of conviction, an increase in pleas, longer sentences, and higher fines and costs
TWENTY YEARS OF RISING COSTS

Between fiscal years 1987 and 2007, total state general fund expenditures on corrections rose 315 percent.

$50 billion
$44.06 billion
$19.38 billion
$10.62 billion

SOURCE: National Association of State Budget Officers, "State Expenditure Report" series; Inflation adjusted figures are based on a reanalysis of data in this series.

NOTE: These figures represent state general funds. They do not include federal or local government corrections expenditures and typically do not include funding from other state sources.

MAKING DECISIONS WHERE TO SPEND

While states don’t necessarily choose between higher education and corrections, a dollar spent in one area is unavailable for another.

Ratio of corrections to higher education spending, 2007

Vermont: 1.37
Michigan: 1.19
Oregon: 1.06
Connecticut: 1.03
Delaware: 1.00
Massachusetts: 0.98
Rhode Island: 0.83
California: 0.83
Pennsylvania: 0.81
Montana: 0.81
Colorado: 0.78

Five states spent as much or more on corrections than they did on higher education.
Berrien County IDIP

- Must provide the best possible representation for some of the most vulnerable of our community
- Human lives at stake trumps numbers

Key considerations:
- Comparable resources with the Prosecutor
- Manageable caseloads
- Reasonable attorney fees (pay parity)
Comparable Resources with Prosecutor

North Carolina Indigent Defense Services Analysis:

During that presentation, representatives of the Conference stated that the prosecution is “outspent and outfunded every day in court,” and urged Legislators to “compare apples to apples” when looking at the budgets for the prosecution and defense functions. Based on that comparison, the DAs urged Legislators to reduce IDS’ budget, rather than the budgets for prosecutors and the courts.

The IDS Commission and Office support adequate funding for the entire criminal justice system, including the courts themselves, the prosecution, and the defense. However, the DAs’ comparison of their budget to the IDS budget is inappropriate and misleading, and it does not compare apples to apples.

A more accurate comparison of DA and indigent defense resources is shown in the following chart:

<table>
<thead>
<tr>
<th>District Attorneys:</th>
<th>Indigent Criminal Defense:</th>
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<tbody>
<tr>
<td>DA Budget for Indigent Criminal Cases: $55M</td>
<td>Appropriation for Indigent Criminal Cases: $90.6M</td>
</tr>
<tr>
<td>Additional SBI Resources: $30M</td>
<td>Budgeted Recoupment Receipts: $12M</td>
</tr>
<tr>
<td>Additional Police Resources: $200M</td>
<td></td>
</tr>
<tr>
<td>Additional Unquantifiable Resources</td>
<td></td>
</tr>
<tr>
<td>(e.g., local crime labs, State Highway Patrol)</td>
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</tbody>
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Total Resources: More than $285 million  
Total Resources: $102.6 million

## Berrien County Comparison

<table>
<thead>
<tr>
<th>Indigent Defense</th>
<th>Prosecutor</th>
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<tbody>
<tr>
<td><strong>Budget:</strong> $1,045,684 (2016)</td>
<td><strong>Budget:</strong> $2,608,681 (2016)</td>
</tr>
<tr>
<td>2,573 felonies (77% of total)</td>
<td>3,378 felonies</td>
</tr>
<tr>
<td>2,963 misdemeanors</td>
<td>Estimated well over 5,500 misdemeanors</td>
</tr>
<tr>
<td>15 contract attorneys</td>
<td>Police resources</td>
</tr>
<tr>
<td>• Not designated full-time</td>
<td>• 37.5 total positions</td>
</tr>
<tr>
<td>• Located in many offices</td>
<td>• 19 attorneys</td>
</tr>
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<td></td>
<td>• 10 support staff</td>
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</tbody>
</table>
Manageable Caseloads

Based on ABA’s 1973 guidelines, which are likely outdated, we need 17 full-time lawyers to handle felonies, and 7.5 full-time lawyers to handle misdemeanors.

Furthermore, we must consider the current research and national trends regarding the excessive caseload issue in the U.S. The Missouri Project, based on research and data, formulated expected hours, per attorney, per type of case, with consideration for ABA and ethical requirements:

<table>
<thead>
<tr>
<th>Type of Case</th>
<th>Client Communication</th>
<th>Discovery/Investigation</th>
<th>Case Preparation</th>
<th>Total Hours</th>
</tr>
</thead>
<tbody>
<tr>
<td>Homicide</td>
<td>34.6</td>
<td>33.5</td>
<td>38.5</td>
<td>106.6</td>
</tr>
<tr>
<td>AB Felony</td>
<td>13.1</td>
<td>18.3</td>
<td>16.2</td>
<td>47.6</td>
</tr>
<tr>
<td>CD Felony</td>
<td>6.3</td>
<td>8.4</td>
<td>10.3</td>
<td>25</td>
</tr>
<tr>
<td>Sex Felony</td>
<td>22.5</td>
<td>17.8</td>
<td>23.6</td>
<td>63.8</td>
</tr>
<tr>
<td>Misdemeanor</td>
<td>3.5</td>
<td>4.1</td>
<td>4.1</td>
<td>11.7</td>
</tr>
<tr>
<td>Juvenile</td>
<td>5.4</td>
<td>6.8</td>
<td>7.3</td>
<td>19.5</td>
</tr>
<tr>
<td>Appellate/PCR</td>
<td>20.3</td>
<td>31.5</td>
<td>44.7</td>
<td>96.5</td>
</tr>
<tr>
<td>Probation Violation</td>
<td>2.9</td>
<td>2.6</td>
<td>4.2</td>
<td>9.8</td>
</tr>
</tbody>
</table>

http://www.americanbar.org/content/dam/aba/events/legal_aid_indigent_defendants/2014/ls_sclaid_5c_the_missouri_project_report.authcheckdam.pdf
Reasonable Attorney Fees

- No justification to pay indigent defense attorneys less than their counterparts
- Pay parity attracts quality attorneys
Five Options for Berrien County

- **Option 1: Contract System**
  - Add FT admin. asst.; increase the total for Arraignment coverage; provide legal research tools; provide PT investigator
  - Increases budget $149,454
  - I STRONGLY RECOMMEND AGAINST THIS OPTION
Option 2: Hybrid System

- Add 5 FT attorneys for North County felonies
- Add 1 FT attorney for in-custody arraignments
- Add 2 FT admin. asst.
- Add 1 PT investigator
- Add $200,000 for conflict and “overflow” counsel
- Increases budget by $475,867 to $1,912,719
Option 2A: County Administrator Wolf’s Proposal

- Add 6 FT attorneys and 1 PT attorney
- Add 2 admin. asst.
- Add 1 PT investigator
- Increases budget by $494,875 to $1,931,727
- A first step in moving toward a public defender office
Option 3: Public Defender Office

- Add 16 FT attorneys
- Add 3 admin. asst.
- Add 1 FT paralegal
- Add 3 FT investigators
- Add 2 FT social workers
- Increases budget by $1,355,799 to $2,792,651
Option 4: Model Public Defender Office
- Add 23 FT attorneys
- Add 4 FT admin. asst.
- Add 1 FT paralegal
- Add 4 FT investigators
- Add 3 FT social workers
- Increases budget $2,003,824 to $3,440,676
- Model PD Office for the State of Michigan
- Would be compliant with ABA, ethics, standards based upon current case assignment numbers
Historically, 80% of Idaho’s 44 counties used flat-fee, low-bid contract systems: county-funded

Canyon Co. pop. = 207,478

2009: Canyon Co. forms Canyon County Criminal Justice Planning Council (CCCJPC)

July of 2012, Canyon Co. Bd. Of Commissioners sent letter to CCCJPC to ‘explore the means by which the County might transition to an indigent defense delivery system whose framework reflects the American Bar Association’s “Ten Principles of a Public Defender Delivery System.”’
February 26, 2013: CCCPJC recommends PD Office with 21 attorneys and 13 support staff
April 2014: ID State Legislature bans use of contracts in ID delivery and created a seven-person state ID commission
October 1, 2014: PD Office opens
2015: 20 FT attorneys, 11 support staff, 3 FT investigators
2015: 8,154 total assigned cases, including:
   • 5,626 misdemeanors
   • 1,340 felonies
   • 617 juvenile delinquency
   • 248 civil commitments
2015 budget: $3.2 million